

## UNITED STATES DO REPORT OF COMMERCE Patent and Trademark Office Address: COMMISSIONER OF PATENTS AND TRADEMARKS Washington, D.C. 20231

SERIAL NUMBER FILING DATE FIRST NAMED APPLICANT	AT	ATTORNEY DOCKET NO	
09/142,524 01/04/99 SONE	T	SPO-103	
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HM22/0213 DAVID R SALIWANCHIK	DIBRINO, M		
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02/13/01

Below is a communication from the EXAMINER in charge of this application COMMISSIONER OF PATENTS AND TRADEMARKS

The PERIOD FOR RESPONSE:	ADVISORY ACTION		
expines to the months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expine later than aix months from the date of the final rejection. Any extension of time must be obtained by filing a patient made of 7 CFR 1.136(e), the proposed response and the appropriate fee. The date on which the response, the perition, and the interest been filed is the date of the response and also the date for the purposes of determining the period of actions, and the corresponding amount of the fee. Any extension for pursuant to 37 CFR 1.176(e) with the calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.    Applicant's response to the final rejection, filed to place the application in condition for allowance:	FUTHE PERIOD FOR RESPONSE:		
b)   expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statuture period for the response expire later than six months from the date of the final rejection.  Any extension of time must be obtained by fling a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and the appropriate fee. The date on which the response, the petition is not to the fee. Any extension fee pure many of the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee purposes of the final rejection, filed purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee purposes of the final rejection filed purposes of the spilication in condition for allowance:    Applicant's response to the final rejection, filed purposes of the application in condition for allowance:	a)     is extended to (vi) s, sometimes a		
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pipears the application in condition for allowance:    The proposed amendments to the claim and /or specification will not be entered and the final rejection stands because:	Appellant's Brief is due in accordance with 37 CFR 1.192(a).		
1. The proposed amendments to the claim and /or specification will not be entered and the final rejection stands because:  a. There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.  b. They raise new issues that would require further consideration and/or search. (See Note). *  c. They raise new issues that would require further consideration and/or search. (See Note). *  c. They raise new issues that would require further consideration and/or search. (See Note). *  c. They raise new issues that would require further consideration and/or search. (See Note). *  c. They raise new issues that would require further consideration and/or search. (See Note). *  c. They raise new issues that would require further consideration and/or search. (See Note). *  c. They raise the issue of new matter. (See Note).  d. They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.  e. They proposed or claims without cancelling a corresponding number of finally rejected claims.  They proposed or claims and a See Call they in the consideration for the consideration and a search of the consideration and a separately flied amendment cancelling and the non-allowable claims.  They fill that is claim and invivo in proposed claims will not be entered and the status of the claims will be as follows:  Claims allowed:  Claims allowed:  Claims allowed:  Claims rejected in NANE  Claims rejected:  Applicant's explose the proposed amendment will be entered but does not overcome the rejection because the proposed of the consideration and a search of the constant of the claims will include a search of the constant of the claims will include a search of the constant of the claims will include a search of the cons	Applicants response to the incondition for allowance: to place the application in condition for allowance:		
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Advisory Action continued...

Applicant's declaration under 37 C.F.R. 1.132 filed 1/19/00 is acknowledged.

With regard to Applicant's comments in the amendment after final submitted 1/19/00 and the aforementioned 132 declaration, Applicant's arguments have been fully considered but are not persuasive. Specifically, although Applicant has demonstrated that six of their multi-epitope peptides do not react significantly with sera from 21 patients allergic to cedar pollen or with sera from 8 non-cedar pollen allergic individuals, this does not address the teachings of Rogers et al. Rogers only examined a panel consisting of only five patients' sera by Western Blot and in ELISA assay (Fig. 4 of Rogers) and examined 6 peptides. With regard to the ELISA assay the reactivity of peptide 11-12-13 appears to be artifactual as the more dilute sample (second data point) reacted at a higher level than the less dilute sample (first data point). In any case, Rogers et al clear teach the desirability of making synthetic peptides which do not bind allergen-specific IgE lies in non-induction of release of histamine from allergic basophils, and the skilled artisan would have been motivated to make the said non-IgE reactive synthetic peptides.

With regard to Applicant's comments on page 8 of the said amendment at the last 4 lines, since the proposed claims have not been entered, Applicant's arguments are moot. With respect to Applicant's further comments on page 9, first paragraph, and in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See in re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found wither in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In the instant case, Komiyama et al teach CryJ1 and CryJ2 are the major allergens of Japanese Cedar Pollen and the usefulness of these proteins for immunotherapy, WO 94/1560 teaches peptides comprising epitopes from peptides which are immunologically related, including Japanese Cedar Pollen allergen. The rejection stands for the reasons of record.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marianne DiBrino whose telephone number is (703) 308-0061. The examiner can normally be reached Monday through Friday from 8:30 am to 6:00 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (703) 308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-0196.

Papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center telephone number is (703) 305-3014.

Marianne DiBrino, Ph.D.

Patent Examiner

Group 1640

Technology Center 1600

February 12, 2001

CHRISTINA Y. CHAN

SUPERVISORY PATENT EXAMINER GROUP 1800 16 KO